

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ARMOND DAVIS ROSS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

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Case No. CIV-20-1092-D

**ORDER**

Before the Court is Petitioner's motion [Doc. No. 11] to vacate the Court's Order [Doc. No. 8] adopting United States Magistrate Judge Gary M. Purcell's Report and Recommendation, and the Court's Judgment [Doc. No. 9] dismissing Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 without prejudice. Petitioner asserts that he did not receive a copy of Judge Purcell's Report and Recommendation. [Doc. Nos. 10, 11]. Rather, he contends that the last document he received from the Court prior to the Court's Order dated December 30, 2020, was an envelope addressed to Petitioner on the outside, but containing a document with another person's name and address on the inside. [Doc. No. 10].

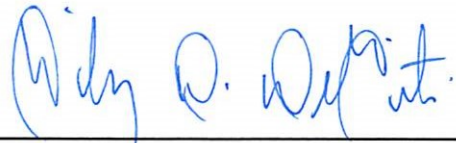
Local Rule 5.4(a) expressly provides that the responsibility of the Court is limited to mailing pleadings to a *pro se* litigant's last known address. LCvR 5.4(a). Service is deemed complete under FED. R. CIV. P. 5(b)(2)(C) upon mailing to the person's last known address. "Service by mail is complete upon mailing. Mailing to a person's last known address completes effective service, even if the mail is not received." *Kirby v. O'Dens*,

Case No. CV-14-388-GKF-PJC, 2015 WL 2341535, at \*2 (N.D. Okla. May 14, 2015) (citations omitted).

The record reflects that a copy of Judge Purcell's Report and Recommendation [Doc. No. 7] was mailed to Petitioner on November 20, 2020, and it was not returned to the Court. Further, although Petitioner asserts that he received a document with another person's name and address, he does not attach a copy of this document to his motion to support his assertion. Thus, the Court finds under Rule 5(b)(2)(C) that service was complete on November 20, 2020, when the Report and Recommendation was placed in the mail.

Accordingly, Petitioner's motion [Doc. No. 11] to vacate the Court's Order adopting Judge Purcell's Report and Recommendation and the Court's Judgment is **DENIED**. Petitioner's other pending motions [Doc. Nos. 10, 12, 13, and 14] are **DENIED** as moot.

**IT IS SO ORDERED** this 11<sup>th</sup> day of March 2021.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge